

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA :

v. :

JOSE D. DE LA ROSA, :
Defendant. :

06-CR-6042L

STATEMENT OF THE GOVERNMENT WITH RESPECT
TO SENTENCING FACTORS AND MOTION PURSUANT TO
U.S.S.G. § 3E1.1(b)

PLEASE TAKE NOTICE that the government hereby adopts all of the findings of the Pre-sentence Report ("PSR") with respect to sentencing factors in this action.

The defendant is required by 18 U.S.C. § 3013 to pay the sum of \$100 at the time of sentencing.

In the event present counsel for the defendant will continue to represent the defendant after sentencing in regard to the collection of unpaid financial obligation(s), it is requested that a letter so advising be sent to:

Asset Forfeiture/Financial Litigation Unit
U.S. Attorney's Office--WDNY
138 Delaware Avenue
Buffalo, New York 14202

If a letter is not received within 10 days of sentencing, the defendant will be directly contacted regarding collection of the financial obligation(s).

Upon the ground that the defendant has assisted authorities in the investigation or prosecution of the defendant's own misconduct by timely notifying authorities of the defendant's intention to enter a plea of guilty, thereby permitting the government to avoid preparing for trial and permitting the government and the Court to allocate their resources efficiently, the government hereby moves the Court to apply the additional one (1) level downward adjustment for acceptance of responsibility pursuant to U.S.S.G. § 3E1.1(b).

Lastly, the government hereby moves the Court for a downward departure in sentence for the above-captioned defendant for the reasons set forth below:

1. On October 14, 2008, defendant Jose D. De La Rosa entered a plea of guilty to Count One of the Superseding Indictment in this case. As part of the Plea Agreement, the Government agreed to move for a downward departure in sentence, pursuant to Sentencing Guidelines Section 5K1.1 and/or Title 18, United States Code,

Section 3553(e), if the defendant cooperated with the Government by providing substantial assistance to it in the investigation or prosecution of others.

2. The government hereby represents to the Court that the defendant has provided substantial cooperation to it within the meaning of Sentencing Guidelines Section 5K1.1 and the Plea Agreement executed by the parties in this case. However, the government anticipates that there is additional substantial assistance to be provided by defendant that will occur post-sentencing and pre-deportation. Pursuant to paragraph 36 of the Plea Agreement, the government intends to reflect post-sentencing cooperation in a departure motion pursuant to Federal Rule of Criminal Procedure 35(b). Accordingly, the Government moves the Court, pursuant to Sentencing Guidelines Section 5K1.1, for a downward departure at this time to a total offense level of 32 and guideline range of 121-151 months. The Government further requests that the Court sentence the defendant to a period of incarceration at the low end of the suggested range, that is, 121 months. Pursuant to paragraph 36 of the Plea Agreement, the government requests that the defendant's post-sentencing cooperation in compliance with the terms of the plea agreement be a specific condition of his supervised release.

3. In support of the current motion, the government will supply the Court with the details under separate cover.

Dated: Rochester, New York
October 24, 2011

Respectfully submitted,

WILLIAM J. HOCHUL, Jr.
UNITED STATES ATTORNEY
WESTERN DISTRICT OF NEW YORK
500 Federal Courthouse
100 State Street
Rochester, New York 14614
(585) 263-6760, ext. 2234
Frank.Sherman@usdoj.gov

By: s/FRANK H. SHERMAN
FRANK H. SHERMAN
Assistant United States Attorney

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA

v.

JOSE D. DE LA ROSA,

Defendant.

06-CR-6042L

CERTIFICATE OF SERVICE

I hereby certify that on October 24, 2011, I electronically filed the foregoing **STATEMENT OF THE GOVERNMENT WITH RESPECT TO SENTENCING FACTORS AND MOTION PURSUANT TO U.S.S.G. § 3E1.1(b)** with the Clerk of the District Court using its CM/ECF system, which would then electronically notify the following CM/ECF participant in this case:

M. Kirk Okay, Esquire
546 East Main Street
P.O. Box 622
Batavia, New York 14021-0622

By: s/FRANK H. SHERMAN
FRANK H. SHERMAN